



BOARD OF EQUALIZATION STATUS REPORT

- ☒ Board Members
- ☐ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

Topic:

Proposed revision of the State Board of Equalization Rules of Practice into the *Board of Equalization Rules for California Tax Administration and Appellate Review - Chapter 1, Title, and Chapter 2, Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees.*

Background:

In July 2005 staff began working with interested parties to revise the Board's current Rules of Practice (Cal. Code Regs., tit. 18, §§ 5010-5095). The project's objective was to produce the Board of Equalization Rules for California Tax Administration and Appellate Review (New Rules), which would provide more comprehensive guidance regarding the administrative and appellate review processes for all of the tax and fee programs administered by the Board. The revisions also address the issuance of decisions, publication of opinions, the nature of Board hearings, communications with Board Members, and the disclosure of information relevant to a Board hearing.

Staff released the first draft of the New Rules on September 14, 2005. The proposal for the New Rules consisted of five parts:

- Part 1, Statement of Intent; Title (Section 1000);
- Part 2, Review of Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees (Sections 2000-2107);
- Part 3, Administrative Review of Property Taxes (Sections 3100-3474);
- Part 4, Appeals from Actions of the Franchise Tax Board (Sections 4010-4063); and
- Part 5, General Board Hearing Procedures (Sections 5001-5034).

Staff met with interested parties on September 28, 2005 to discuss the overall project and met again on October 26, 2005, to discuss proposed revisions to Part 2 specifically. Transcripts from both meetings are available on the Board's web site at <http://www.boe.ca.gov/regs/timelineCAtax.htm>.

Throughout the revision process, staff received valuable comments from several interested parties. Staff considered all of the comments and incorporated clarifying language when appropriate. A summary of the revisions is listed below.

As part of the revision process, staff also determined that the Board's current Rules of Practice should be repealed from Division 2 of Title 18 of the California Code of Regulations, and that each part of the New Rules should be promulgated as a Chapter in a new Division 2.1 (New Division 2.1), which will be entitled "Administration." As such, staff has renamed Parts 1 and 2 of the

September 14, 2005 proposal as Chapters 1 and 2 of New Division 2.1, and renumbered the regulations in each part accordingly. An outline of New Division 2.1 is included in attached Exhibit 1. Revisions to the original proposals for Parts 1 and 2 of the New Rules are noted in strikeout and underline format in Exhibit 2.

General Revisions:

Staff made several corrections and changes throughout the new regulations including: revising titles for clarity and consistency with section text; changing “taxpayer” to “tax or fee payer” in sections that apply to fee programs; adding Authority, Reference, and History notes for each regulation; and adding “promptly” to ensure the timeliness of response letters sent by Board staff. In addition, staff revised “should” to “may” in instances where an action may be recommended, but is not required, added language explaining when documents may be submitted electronically or by hand delivery, and replaced “Chief of Board Proceedings” with “Chief Counsel or his or her designee” in sections where staff has discretion to grant extensions of time or permission to submit additional information. The Chief Counsel intends to delegate the discretionary authority in sections 5000.2102, 5000.2110, and 5000.2111, to the Chief of Board Proceedings when the regulations become effective.

Specific Comments and Revisions:

Staff also received comments that were specific to certain proposed regulations and either revised such regulations or responded to such comments as follows:

Chapter 1, Title

1. Section 5000.1000 – Deleted first two paragraphs in response to comments received by the Office of Administrative Law.
2. Section 5000.1000 – Amended third paragraph to make it more concise and retain some of the meaning conveyed by the deleted paragraphs.

Chapter 2, Article 1 – Application of this Chapter

3. Section 5000.2000 – Deleted references to specific tax and or fee programs because such programs are enacted and/or repealed regularly.
4. Section 5000.2001 – Added provision that if there is a conflict with the section and the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling. (Section 5020(c) of the current Rules of Practice had been unintentionally omitted.)
5. Section 5000.2002 – Added provision that any notice given pursuant to this chapter shall be served personally or by mail in the manner prescribed by statute for service of notice of a deficiency determination. (Section 5036 of the current Rules of Practice had been unintentionally omitted.)

Chapter 2, Article 2A – Petitioning Notices of Determination and Notices of Deficiency Assessment

6. Section 5000.2010(b) – Revised pursuant to a request from Mr. Joseph Vinatieri to define the phrase “directly interested.” Staff’s definition provides a nonexclusive list of “directly interested” persons, retains the Board’s current discretion to determine whether additional persons are “directly interested,” and specifically excludes consumers who owe or have paid sales tax reimbursement to retailers.

7. Section 5000.2010(b)(8) – Deleted references to specific tax and or fee programs because such programs are enacted and/or repealed regularly.
8. Section 5000.2012(d) – Pursuant to comments from Ms. Marcy Jo Mandel, staff clarified that a petition for redetermination is premature and not valid if it is filed before a notice of determination, notice of deficiency assessment, or notice of successor liability is issued. Staff further clarified that the Board may accept a premature petition for redetermination as an administrative protest (see also section 5000.2030).
9. Section 5000.2012(d) – Received a suggestion from Mr. Abe Golomb that letters sent from auditors clearly state they are not bills, so the taxpayer knows not to file a petition at that time. Staff reviewed the form letters that are currently sent to tax and fee payers along with their audit results and working papers, and found that they do explain that a Notice of Determination will be sent separately and that the taxpayer may file a petition after receiving the Notice.
10. Section 5000.2012(e) – Added language explaining that a notice of determination will not become final while a timely filed petition for redetermination is pending.
11. Section 5000.2013(a)(2) – Received a suggestion from Mr. Joseph Vinatieri to delete paragraph because the statute does not require the petition to specify an amount. Section retained, but revised to state that the petition shall include an amount “if known.”
12. Section 5000.2013(b) – Received a suggestion from Mr. Abe Golomb to specify that tax and fee payers only need to request an oral hearing once. Revised other sections to ensure that staff only asked tax and fee payers to confirm a request for an oral hearing once made.
13. Section 5000.2013(d) – Incorporated suggestion from Mr. Abe Golomb to clarify that petitioner should include copies of evidence with petition, not original documents.
14. Section 5000.2015 – Incorporated suggestion from Mr. Kai Mickey to clarify that except in limited circumstances, the Board has no statutory authority to relieve interest.
15. Section 5000.2016 – Incorporated suggestion from Department of Insurance to direct a copy of the filing to the Premium Tax Audit Bureau.
16. Section 5000.2017(b)(1) – Revised pursuant to suggestion from Mr. Joseph Vinatieri to broaden the scope of petitions for redetermination of the Childhood Lead Poisoning Prevention Fee.
17. Section 5000.2017(b)(2) – Mr. Joseph Vinatieri suggested that the Board place a time limit on the Department of Health Services’ review. Staff did not do so because there is no statutory time limit, and doing so would deprive the Board of the benefit of the department’s expertise.
18. Sections 5000.2018 and 5000.2019 – Mr. Joseph Vinatieri asked staff what actions the Board will take after the Department of Toxic Substances Control or the State Water Resources Control Board acts on a petition. Staff explained that the Board does not have jurisdiction to take any action and that proposed sections were designed to provide procedural guidance to fee payers wishing to file such petitions. (See Public Resources Code section 42464.6 and Water Code section 1120, et seq., respectively.)
19. Section 5000.2020 – Added an address for filing a petition for redetermination under the Timber Tax Law.
20. Section 5000.2022(a) and (b) – Revised pursuant to suggestion from Mr. Joseph Vinatieri. Revisions give assigned section or group discretion as to whether to refer petitions back to the district office or audit group.

21. Section 5000.2022(d) – Added provision that upon completion of its review, the assigned section or group will present its findings to the petitioner.
22. Section 5000.2022(e) – Staff clarified the procedures set forth in paragraphs (1) and (2) of subdivision (d) in a new subdivision (e), and renumbered original subdivision (e).
23. Section 5000.2023. Added provision requested by Mr. Joseph Vinatieri requiring that the summary analysis of the petition for redetermination be provided to the petitioner.

Chapter 2, Article 2B – Filing an Administrative Protest

24. Section 5000.2030(a) – Expressly provided the Headquarters Operations Division Chief or his or her designee with discretion to accept an administrative protest pursuant to a comment received from Ms. Joan Armenta-Roberts. In addition, incorporated suggestion from Ms. Marcy Jo Mandel to clarify that the Board may accept a premature petition for redetermination as an administrative protest.
25. Section 5000.2030(d) – Explained that a claim for refund should be filed for each payment made on an administrative protest.
26. Section 5000.2031 – Incorporated suggestion from Mr. Kai Mickey, to clarify that except in limited circumstances, the Board has no statutory authority to relieve interest.

Chapter 2, Article 2C – Contesting a Jeopardy Determination

27. Section 5000.2041 – Incorporated suggestion from Mr. Abe Golomb to clarify that an authorized representative may file on behalf of the person receiving the jeopardy determination.
28. Section 5000.2046 – Added language suggested by Mr. Joseph Vinatieri allowing persons to file a petition for redetermination and application for administrative hearing, and providing that both requests will be consolidated into one administrative hearing.
29. Section 5000.2049(b) – Added information regarding property seized pursuant to a notice of jeopardy determination or jeopardy assessment. (Section 5033 of the current Rules of Practice had been unintentionally omitted.)
30. Section 5000.2049.5(a) and (c) – Added language suggested by Mr. Joseph Vinatieri requiring the prompt handling of applications for administrative hearings.
31. Section 5000.2049.5(b) – Added information regarding the findings of the Appeals Division regarding the granting of relief. (Section 5035 of the current Rules of Practice had been unintentionally omitted.)

Chapter 2, Article 3 – Claims for Refund

32. Section 5000.2050(b) – Mr. Joseph Vinatieri suggested that this subdivision provide for Board review of the Controller's determinations regarding such refunds, however, staff did not find authority for such language. (See Rev. & Tax. Code, §§ 8102, 8103, 8126, 8127.)
33. Section 5000.2050(c)(3)(A) – Revised language to broaden the scope of claims for refund as suggested by Mr. Joseph Vinatieri.
34. Section 5000.2050(c)(3)(B) - Mr. Joseph Vinatieri suggested that the Board place a time limit on the State Department of Health Services review. Staff did not do so because there is no statutory time limit, and doing so would deprive the Board of the benefit of the department's expertise.
35. Section 5000.2053(d) – Incorporated suggestion from Mr. Abe Golomb to clarify that petitioner should include copies of evidence with claim, not original documents.

36. Section 5000.2053(f) – Incorporated suggestion from Ms. Joan Armenta-Roberts to explain that claimants may not reduce a return for any reporting period by the amount claimed for refund.
37. Section 5000.2061 – Received suggestion to delete this section. Staff retained section because the Board is not statutorily required to provide an appeals conference or Board hearing on a claim for refund, and the section is necessary to notify claimants about the Board’s discretion.
38. Section 5000.2062(f) – Incorporated suggestion from Ms. Joan Armenta-Roberts to require staff to submit recommendations to deny refunds in excess of \$50,000 for Board approval.
39. Section 5000.2064 – Added information regarding combined claims for refund on behalf of members of a class of taxpayers. (Section 5024 of the current Rules of Practice had been unintentionally omitted.)

Chapter 2, Article 4B – Successor’s Request for Relief of Penalty Under the Sales and Use Tax Law

40. Section 5000.2075 – Added provisions for filing requests for relief.

Chapter 2, Article 4C – Other Requests for Relief of Penalties and Interest

41. Section 5000.2080 – Received suggestion to add language explaining that the tax or fee payer has a right to an oral hearing before the Board. Staff did not revise this section because the Board has discretion. Staff did revise section 2087 to further clarify the procedures for reviewing such requests and requesting oral hearings.
42. Section 5000.2087(e) and 5000.2087(f) – Added procedures for requesting reconsideration by the appropriate Deputy Director. If the Deputy Director also denies relief, the person requesting relief may request a discretionary oral hearing before the Board.

Chapter 2, Article 6 – Appeals Conferences

43. Section 5000.2101(c) – Deleted provisions that are not in section 5023 of the current Rules of Practice regarding the inability of a hearing officer to consider arguments or evidence withheld until the date of the appeals conference or after as suggested by Mr. Joseph Vinatieri.
44. Section 5000.2102(c) – Provided examples of “extreme hardship” for clarity.
45. Section 5000.2104(d) – Corrected inconsistency with section 5000.2101.
46. Section 5000.2105(b) – Revised to accept additional information provided by the parties.
47. Section 5000.2106(f) – Revised to agree with section 5000.2062.
48. Section 5000.2107 – Staff added subdivisions (b) and (c) to incorporate the Board’s current policy of consolidating certain related matters regarding resale and exemption certificates.
49. Section 5000.2108 – Added provisions that Board hearings shall be conducted pursuant to the hearing procedures set forth in Chapter 5. (Section 5020(a) of the current Rules of Practice had been unintentionally omitted.)

Chapter 2, Article 7 – Optional Briefs for Oral Hearings Before the Board

50. Section 5000.2110 – Staff did not include a briefing schedule in its original September 14, 2005, proposal. Staff released the briefing schedules contained in alternatives 1 and 2 on December 9, 2005, in response to a request from Mr. Marty Dakessian that the Board provide taxpayers with more time to prepare and file their briefs. Staff recently added alternative 3 in order to provide an example of the Board’s current briefing schedule.
51. Section 5000.2111 – Revised to provide a corresponding extension for filing a response when

an extension of time is granted for the filing of any brief.

Current Status:

This status report presents for Board approval Chapter 1, *Title*, and Chapter 2, *Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees*.

Staff will present the rest of the New Rules (i.e., Part 3, Administrative Review of Property Taxes; Part 4, Appeals from Actions of the Franchise Tax Board; and Part 5, General Board Hearing Procedures) at future 2006 Board meetings. Once the Board has decided whether to adopt all of the New Rules, staff will request permission to repeal the current Rules of Practice from Division 2 of Title 18 of the California Code of Regulations and promulgate the New Rules the Board has adopted in New Division 2.1, and ask the Board to authorize publication of the entire regulatory package.

There are no unresolved issues in Chapter 1 or Chapter 2, Articles 1 – 6 and Article 7, section 5000.2111 and staff recommends the Board adopt those provisions (see Exhibit 2). However, the issue of briefing schedules in section 5000.2110 needs Board decision. Three alternatives were drafted to address the issue:

Alternative 1 - (30/30/15 schedule). Staff recommends this alternative. This briefing schedule provides taxpayers with a full 30 days to prepare their opening briefs without substantially affecting the length of the appeals process. The alternative requires that:

- The taxpayer file its opening brief within 30 days after the date the Appeals Division issues its Decision and Recommendation;
- The Department's reply brief is due 30 days after the taxpayer's opening brief is due; and
- The taxpayer's response is due 15 days after the Department's reply is due.

By tying the briefing schedule to the issuance of the Decision and Recommendation, the Board can provide more time for briefing and still issue its notice of hearing within 60 days of the scheduled hearing date. For example, if the notice of hearing was issued on the day the taxpayer's opening brief was due, the briefing schedule would still be completed 15 days before the scheduled hearing.

Alternative 2 – (20/20/15 schedule). Staff prefers the first alternative, but provided this alternative because it provides taxpayers with a little more time to prepare and file opening briefs, while continuing to tie the briefing schedule to the notice of hearing. The alternative presumes that:

- Notice of hearing will be issued 75 days before hearing;
- Taxpayer's opening brief will be filed 55 days before hearing;
- Department's reply brief filed 35 days before hearing; and
- Taxpayer's response filed 20 days before hearing.

This alternative gives taxpayers and the department an extra five (5) days to prepare and file their opening and reply briefs, and gives the Appeals Division and the Board an extra five (5) days to review all of the briefing prior to the Board hearing. The time period to prepare and file responses to reply briefs was not extended because taxpayers don't file responses in every appeal and responses require less time to prepare and file due to their limited nature.

Alternative 3 - (15/15/15 schedule). This alternative consists of the Board's current briefing schedule contained in California Code of Regulations, title 18, section 5075. The alternative presumes that:

- Notice of hearing will be issued 60 days before hearing;

- Taxpayer's opening brief filed 45 days before hearing;
- Department's reply brief filed 30 days before hearing; and
- Taxpayer's response filed 15 days before hearing.

This alternative results in a very tight briefing schedule, which sometimes gives taxpayers less than 15 days to prepare and file their opening briefs.

Conclusion:

Staff recommends the Board approve proposed Chapter 1 and Chapter 2, Articles 1 – 6 and Article 7, Section 5000.2111, and Alternative 1 of section 5000.2110, Briefing Schedule.

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